

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS
COMMERCE COMMISSION

FEB 6 10 29 AM '01

CITY OF COLUMBIA, ILLINOIS,)

vs.)

ILLINOIS-AMERICAN WATER)
COMPANY,)

COMPLAINT AS TO PROVIDING)
SERVICE OUTSIDE OF UTILITY'S)
CERTIFICATED SERVICE AREA)
IN MONROE COUNTY, ILLINOIS.)

CHIEF CLERK'S OFFICE
OFFICIAL FILE

Docket No. 00-0679

ILL. C. No. 00-0679
Columbia Co. 2

Witness

Date 3/15/01

Responser *and*

REBUTTAL TESTIMONY OF LESTER SCHNEIDER
WITNESS FOR COMPLAINANT, CITY OF COLUMBIA, ILLINOIS IN CITY OF
COLUMBIA, ILLINOIS VS. ILLINOIS-AMERICAN WATER COMPANY COMPLAINT
AS TO PROVIDING SERVICE OUTSIDE OF THE PUBLIC UTILITIES'
CERTIFICATED SERVICE AREA IN COLUMBIA, ILLINOIS

- Q. Please state your name and business address.
- A. My name is Lester Schneider and my business address is Columbia City Hall, 208 South Rapp Avenue, P. O. Box 467, Columbia, Illinois 62236.
- Q. What position do you hold with the City of Columbia, Illinois City government?
- A. I am the Mayor of the City of Columbia, Illinois.
- Q. What is your current term of office with the City of Columbia, Illinois?
- A. I was elected for my second term as Mayor in April, 1997, for a four (4) year term which runs from May 1, 1997 until April 30, 2001.
- Q. In 1996 and/or 1997, were you a witness in the Illinois Commerce Commission ("ICC") Docket No. 96-0353 in which Illinois-American Water Company ("IAWC") was applying for extension of IAWC certificated service area along Illinois Highway 158 and Illinois Highway Route 3?
- A. Yes sir, I was.
- Q. Based upon the Certificate of Public Convenience and Necessity that was issued in ICC Docket No. 96-0353 and the legal description of the territory the Certificate

authorized IAWC to serve, is it your understanding that IAWC's service area did not extend beyond the north right-of-way line of Illinois Route 158 between the Quarry Road and Centreville Avenue?

A. Yes sir. That was my understanding and the understanding of the Columbia City Council, (which includes eight (8) aldermen in addition to myself).

Q. Is it correct that the City of Columbia, Illinois, is a wholesale water customer of IAWC, and receives water service from IAWC at a meter point that is located within the IAWC service area certificated by the ICC, which Columbia then transports outside of the IAWC service area for resale to Columbia's customers located out of the IAWC ICC certificated service area?

A. Yes sir, that is correct.

Q. Is that any different from the situation involved in this Docket where IAWC is selling water to retail service customers who receive their water service at a metering point located within the IAWC service area and then transport the water outside of IAWC's service area for use and consumption outside the IAWC certificated service area?

A. Yes sir, it is different.

Q. How is there a difference?

A. The City of Columbia is a municipal corporation that owns and operates a municipal water service system and as such is exempt from the application of the Illinois Public Utilities Act. Section 3-105 of the Illinois Public Utility Act specifically provides:

"Public Utilities' does not include, however:

"1. public utilities that are owned and operated by any public subdivision, or a municipal corporation of the State..." (220 ILCS 5/3-105).

The Courts, in applying the Public Utilities Act regulations, have consistently so held. For example, see:

Island Lake Water Company, Inc. v. La Salle Development Corporation, (2d Dist., 1986) 143 Ill. App.3d 310, 313, 493 N.E.2d 44, 46, 97 Ill. Dec. 562, 564; Village of Niles v. City of Chicago (1st Dist., 1990) 201 Ill. App.3d 657, 664, 558 N.E.2d 1324, 1331, 146 Ill. Dec. 990, 997; Coles-Moultrie Electric

Cooperative v. City of Sullivan, (4th Dist., 1999) 304 Ill. App.3d 153, 167, 709 N.E.2d 249, 258, 237 Ill. Dec. 263, 272.
(Copies of which are attached).

The Illinois Supreme Court has held that the Commerce Commission is without jurisdiction under the Electric Suppliers Act and Illinois Public Utilities Act to consider a complaint from an electric supplier who wishes to provide wholesale electric energy to a municipality, when the municipality has decided to connect its own transmission line to a source of supply of its choice located outside the electric suppliers service area to serve customers within the electric supplier's service area. See Coles-Moultrie Electric Cooperative v. Illinois Commerce Commission, (1969) 43 Ill.2d 340, 253 N.E.2d 434.

Consequently, the City of Columbia, Illinois, as a municipal water service supplier which owns and operates a potable water service distribution system is allowed to purchase water from IAWC within IAWC's service area for resale to retail customers located outside of IAWC's certificated service area. The City is not required to obtain permission from the Commerce Commission (a ICC Certificate of Public Convenience and Necessity) in order to serve those retail customers. Illinois law allows Columbia to purchase from IAWC from a meter point located within IAWC's certificated service area for resale outside of IAWC's certificated service area. Illinois law does not, however, allow IAWC to sell to retail customers outside that utility's certificated service area.

- Q. Are you aware of any retail customers IAWC serves which are or were outside IAWC's service area, but which received their service from a meter point located within IAWC's service area?
- A. Yes sir. When the City of Columbia, Illinois was involved in opposing the Commerce Commission certification of the IAWC service area in ICC Docket No. 96-0353, IAWC bored under Illinois Highway Route No. 3 to provide the Hope Christian Church and 1, 2, or 3 homes located on the West side of Illinois Highway Route No. 3, between Columbia and Waterloo, Illinois, with public water service.
- Q. How is that any different than what is involved in this Docket?
- A. IAWC first sought and obtained from the Commerce Commission a temporary or hardship permit to make the connections and provide the temporary water service pending obtaining a permanent certificate of public convenience and necessity from the Commission to serve those retail water customers.
- Q. Are you aware of any retail customers IAWC provides service to where the customers are located outside of IAWC's certificated service area but receive service from a meter point within IAWC's service area, for which IAWC did not first apply for and receive a temporary or hardship certificate to serve prior to providing

the service (other than Mr. Dawson at 625 Illinois Highway Route 158 involved in this Docket)?

A. No sir, I do not.

Q. Have you received and reviewed the Direct Testimony submitted by Ms. Karen H. Cooper, Manager of the Southern Division of IAWC?

A. Yes sir, I have.

Q. Is it correct that the City of Columbia objects to Ms. Cooper's testimony about IAWC's cost of providing water service to the Byron and Ilo L. Boyle residence at 631 Illinois Highway Route 158, the John Dawson residence at 625 Illinois Highway Route 158 and the Barbara Fulford residence at 607 Illinois Highway Route 158?

A. Yes sir, Columbia does object to that testimony.

Q. What is that objection?

A. Columbia's complaint in this Docket, in my opinion, involves simply a question of law as to whether or not a public water purveyor which is subject to regulation by the Illinois Public Utilities Act is allowed to provide water service to water customers located outside the utility's certificated service area, provided the service connection for the water service is made within the utility's service area. This Docket does not involve an application by a public utility for a certificate of public convenience and necessity, where the Commission would be considering cost of service, quality of service, and time required to provide the service between two (2) competing water service purveyors (the City of Columbia, Illinois, a municipal purveyor, and IAWC, a public utility purveyor) as was involved in Docket No. 96-0353. Therefore, the City objects to any evidence being presented in this case with regard to the relative cost to provide service, relative quality of service and relative length of time required to provide service to the three (3) water customers involved in this Docket. In my opinion, those are non-issues involved in this Docket and are irrelevant and immaterial to any issue involved in this Docket. To allow that evidence will only protract, prolong and complicate this Docket and increase the cost of obtaining a decision in this Docket.

Q. Did you read Ms. Cooper's testimony about the IAWC "stranded" costs for the three (3) property owners?

A. Yes sir, I did.

Q. Do the corporate authorities of the City of Columbia, Illinois have any objection to the City paying IAWC's "stranded costs" for Mr. Dawson's water service or for water

service for the Boyle's in the event IAWC installs their service before there is a decision from the Commission in this Docket?

A. Yes sir, Columbia would object to that.

Q. What is the nature of that objection?

A. Prior to IAWC boring under the pavement of Illinois Highway Route 158 and making the service connection for the Dawson residence at 625 Illinois Highway Route 158, the City representatives (including myself, the City Attorney and our City Engineer, Kenneth Vaughn,) all advised Steve Sears, P. E., (a utility engineer employed by IAWC) and Ms. Cooper that Columbia intended to provide the public water service for the three (3) properties that are involved in this Docket and that it was the City's understanding that those customers were located outside of IAWC's service area. IAWC insisted upon installing the service connection for Mr. Dawson without first obtaining a temporary or hardship certificate from the Commission authorizing IAWC to serve the Dawson residence and prior to anyone being allowed to seek a declaratory judgment from the Commission regarding the certification issue. Now that the Dawson service is installed under the highway, I do not see how the City will ever benefit from purchasing the service from IAWC. The City's engineering calls for a different design for the water service for the three (3) properties. Consequently, I do not see why the City should be required to reimburse IAWC for the "stranded costs" of providing the water service for the Dawson residence (or either of the other two [2] properties if IAWC should install water service for them while this Docket is pending).

Q. Did you read Exhibit KHC-2 attached to Ms. Cooper's direct testimony and her testimony about the exhibit?

A. Yes sir, I did.

Q. How is what happened in Citizens Utilities Company of Illinois ("Citizens"), Cause No. 55454, any different from what IAWC is doing in this Docket?

A. In the case involved Citizens, there was no other utility service provider willing and able to provide water and sewer service to the customer involved (Holiday Inn) and after Citizens made the service connection for the customer, Citizens applied to the ICC for a certificate of public convenience and necessity to serve the subject and additional surrounding territory. It seems to me Citizens should have been required to obtain a temporary or hardship certificate from the Commission before they made the service connection. In any event, any error that may have occurred in having failed to obtain a temporary certificate or permit from the ICC was cured when the Commission ordered the issuance of a certificate of public convenience and necessity to be issued to Citizens. In this Docket, IAWC did not request a temporary or hardship certificate before IAWC made the service connection for the

John Dawson residence and is apparently contemplating doing the same for the Byron and Ilo Boyle residence pending a decision from the Commission in this Docket. Further, IAWC has not and is not now requesting an amendment of its certification in Docket No. 96-0353 to include the three (3) residences on the north side of Highway Route 158.

- Q. How far are the subject three (3) properties on the north side of Highway Route 158 located from the corporate limits of the City?
- A. December 18, 2000, the City annexed the Nahm Trust property (91 acres, more or less) and the adjoining Bai Investments Partnership property (80 acres, more or less) located east of the Nahm annexation tract. That places the corporate limits of the City approximately 1000 feet west of the Fulford property.
- Q. With the completion of the City's water system design for the Centreville Road, Quarry Road and Highway Route 158 waterline design engineering, has the City taken substantial steps toward development of a unified water system for that area?
- A. Yes sir, the City has.

AUGUST 2000
WATER MAIN EXTENSIONS AT STATE RT. 158
CITY OF COLUMBIA, MONROE COUNTY, ILLINOIS
CURRY & ASSOCIATES ENGINEERS, INC. [00.68]

ITEM	QUANTITY	UNIT COST	AMOUNT
TO SERVE SUBDIVISION AT INTERSECTION OF RT. 158 AND CENTREVILLE AVE.			
12" DR18 PVC Water Main & Tracer Wire	1,200 LF	\$20.00	\$24,000
12" Restrained Joint Directional Bored	40 LF	\$50.00	\$2,000
12" Gate Valve & Box	3 EA	\$1,300.00	\$3,900
6" 3-Way Hydrant with Auxiliary Gate Valve & Box	1 EA	\$2,200.00	\$2,200
Connection to 12" Tee and Valve at Meter Vault	1 EA	\$500.00	\$500
Service Tap & Meter Setting	8 EA	\$600.00	\$4,800
Granular Cradle	7 CY	\$20.00	\$140
Select Granular Backfill	22 CY	\$20.00	\$440
8" Compacted Aggregate Base	27 SY	\$15.00	\$405
Seeding & Fertilizing	0.3 AC	\$1,500.00	\$450
	Subtotal		\$38,835
TO SERVE HOMES ON QUARRY ROAD BETWEEN STANDPIPE AND RT. 158			
8" DR18 PVC Water Main & Tracer Wire	1,900 LF	\$9.00	\$17,100
8" Restrained Joint Directional Bored	40 LF	\$35.00	\$1,400
8" Gate Valve & Box	3 EA	\$650.00	\$1,950
6" 3-Way Hydrant with Auxiliary Gate Valve & Box	2 EA	\$2,200.00	\$4,400
Connection to 12x6 Tee and Valve at Standpipe	1 EA	\$500.00	\$500
Service Tap & Meter Setting	12 EA	\$600.00	\$7,200
Granular Cradle	14 CY	\$20.00	\$280
Select Granular Backfill	59 CY	\$20.00	\$1,180
8" Compacted Aggregate Base	77 SY	\$15.00	\$1,155
Seeding & Fertilizing	0.5 AC	\$1,500.00	\$750
	Subtotal		\$35,915
TO SERVE 3 HOMES WEST ON RT. 158 FROM THE END OF THE QUARRY ROAD EXTENSION			
6" DR18 PVC Water Main & Tracer Wire	600 LF	\$7.00	\$4,200
6" Restrained Joint Directional Bored	40 LF	\$30.00	\$1,200
6" Gate Valve & Box	2 EA	\$500.00	\$1,000
6" 3-Way Hydrant with Auxiliary Gate Valve & Box	1 EA	\$2,200.00	\$2,200
Service Tap & Meter Setting	3 EA	\$600.00	\$1,800
Granular Cradle	4 CY	\$20.00	\$80
Select Granular Backfill	18 CY	\$20.00	\$360
8" Compacted Aggregate Base	26 SY	\$15.00	\$375
Seeding & Fertilizing	0.2 AC	\$1,500.00	\$300
	Subtotal		\$11,515
	Total Construction		\$86,265
	10% Contingency		\$8,827
	Total w/Contingency		\$94,892
Engineering	Design Phase		\$8,018 ex. inc.
	Tech. Assistance with ROW		\$2,000 ex. inc.
	Bld Phase		\$2,000 ex. inc.
	Construction Guidance Phase		\$3,701 ex. inc.
	Construction Observation		\$5,219 ex. inc.
Archaeological Survey			\$951
Administration		2.0%	\$1,898
Legal		3.6%	\$3,321
TOTAL			\$122,000

- A. That testimony is irrelevant and immaterial to any issue involved in this Docket. This Docket involves simply a question as to whether a public water purveyor (which is subject to regulation by the Illinois Public Utilities Act) is permitted to provide water service to water customers outside that utility's certificated service area provided the service connection for the water service is located within the utility's service area. IAWC has not applied for a temporary or hardship certificate or an amendment of its certification to allow IAWC to serve the three (3) customers involved in this Docket. It is IAWC's position in this case that as long as the service connection is made within IAWC's certificated service area, IAWC is allowed to serve customers that are located outside of IAWC's service area. Consequently, relative cost of providing the service, relative time required to provide the service and relative quality of service between Columbia and IAWC providing the service is irrelevant and immaterial. There is simply a question of law involved.

That objection having been made and that having been said, in the event the Commission would decide that cost of service is relevant and material testimony in this Docket, the cost for Columbia to provide the water service for the three (3) customers involved in this Docket would be \$12,667 (\$11,515 plus a 10% contingency of \$1,052) if the City hires outside contractors to install the service or \$7,600 for the three (3) services if the City Maintenance personnel do the installation (being 60% of the project engineer's estimated cost for outside contractor installations). Attached hereto as my Sur-Rebuttal Testimony Exhibit "1" is the itemized cost estimate for the three (3) homes west of Route 158 the City received from its project engineer, Curry & Associates Engineers, Inc. While the project engineer's estimate of the total project cost if outside contractors are used for the project is \$122,000, that portion of the cost relating to service for those three (3) homes is estimated to be \$12,667. The City anticipates it will take six (6) months to install the transmission mains involved. For the three (3) services on the north side of Highway 158 the City will seek to obtain easements from the property owners. Alternatively, the City can obtain a permit to install the lines in the north right-of-way of the highway from the Illinois Department of Transportation at little or no cost.